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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT L. STEVENSON,)	No. EDCV 06-0537-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE, ¹)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Robert L. Stephenson filed a complaint on June 1, 2006, seeking review of the Commissioner's decision denying his applications for disability benefits. The Commissioner answered the complaint on October 26, 2006, and the parties filed a joint stipulation on December 26, 2006.

BACKGROUND

I

On August 7, 2002 (protective filing date), plaintiff applied for

¹ Pursuant to Fed. R. Civ. P. 25(d)(1), Michael J. Astrue is substituted as the defendant in this action.

1 disability benefits under Title II of the Social Security Act ("the
2 Act"), 42 U.S.C. § 423, claiming an inability to work since July 27,
3 2002, due to a bipolar disorder, schizophrenia, a stress disorder,
4 short-term memory loss, and blindness in his right eye. Certified
5 Administrative Record ("A.R.") 45-48, 62. The application was denied
6 initially on December 24, 2002, and was denied again on April 10,
7 2003, following reconsideration. A.R. 24-32. Meanwhile, on
8 February 20, 2003 (protective filing date), plaintiff filed an
9 application for disability benefits under the Supplemental Security
10 Income ("SSI") program of Title XVI of the Act, 42 U.S.C. § 1382(a),
11 also claiming an onset date of July 27, 2002. A.R. 11.² The
12 plaintiff subsequently requested an administrative hearing, which was
13 held before Administrative Law Judge F. Keith Varni ("the ALJ") on
14 November 8, 2005. A.R. 34, 263-96. On January 11, 2006, the ALJ
15 issued a decision finding plaintiff is not disabled and denying both
16 applications. A.R. 8-20. The plaintiff appealed this decision to the
17 Appeals Council, which denied review on May 1, 2006. A.R. 4-7.

18 19 II

20 The plaintiff, who was born on April 14, 1969, is currently 38
21 years old. A.R. 46, 265. He has a high school degree and has
22 previously worked as a refurbisher, maintenance person, drywall
23 apprentice, knot buckler, auto reposessor, feeder, and delivery
24 driver. A.R. 63, 68, 71-78, 168.

25 //

26
27 ² The administrative record does not contain the SSI
28 application; however, the ALJ's opinion sets forth the relevant
facts regarding it. A.R. 11-20.

On August 27, 2002, John Arnold, Ph.D., a licensed clinical psychologist, examined plaintiff at the Community Health Association of Spokane ("CHAS") and diagnosed him with an unspecified bipolar disorder and cannabis dependence.³ A.R. 203. The plaintiff received treatment at CHAS through February 11, 2003. A.R. 188-202. On September 6, 2002, Jennifer A. Troiano, M.D., examined plaintiff, diagnosed him with a bipolar affective disorder and prescribed Paxil⁴ and Zyprexa⁵ for him. A.R. 201-02. On October 11, 2002, Dr. Arnold determined plaintiff's Global Assessment of Functioning ("GAF") to be 50,⁶ and opined plaintiff's prognosis was poor, noting plaintiff has a personal and family history of bipolar disorder and admitted smoking cannabis daily. A.R. 196-98. Dr. Arnold also noted that, during treatment, plaintiff exhibited manic behavior, made statements consistent with magical thinking and hyper-religiosity, had an uneven

³ Although plaintiff has both mental and physical complaints, he challenges only the ALJ's assessment of his mental condition.

⁴ "Paxil is prescribed for a serious, continuing depression that interferes with [the] ability to function. Symptoms of this type of depression often include changes in appetite and sleep patterns, a persistent low mood, loss of interest in people and activities, decreased sex drive, feelings of guilt or worthlessness, suicidal thoughts, difficulty concentrating, and slowed thinking." The PDR Family Guide to Prescription Drugs, 492 (8th ed. 2000).

⁵ "Zyprexa helps manage symptoms of schizophrenia and other psychotic disorders." Id. at 773.

⁶ A GAF of 50 means that the plaintiff exhibits "[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 pace and labile affect, and exhibited symptoms of a delusional
2 process; nevertheless, he found plaintiff exhibited reasonable
3 concentration and short and long-term memory function. A.R. 197-98.
4

5 On October 21, 2002, Dr. Arnold opined plaintiff has: "severe"
6 limitations in his ability to exercise judgment and make decisions as
7 well as in his ability to relate appropriately to co-workers and
8 supervisors;⁷ "marked" limitations in his ability to respond
9 appropriately to and tolerate the pressures and expectations of a
10 normal work setting;⁸ "moderate" limitations in his ability to
11 understand, remember and follow complex (more than two step)
12 instructions, learn new tasks, interact appropriately in public
13 contacts, and control physical or motor movements and maintain
14 appropriate behavior;⁹ and "mild" limitations in his ability to
15 understand, remember and follow simple (one or two step) instructions,
16 perform routine tasks, and care for himself, including personal
17 hygiene and appearance.¹⁰ A.R. 190-93. Dr. Arnold also opined
18 plaintiff has: "moderate" depressed moods, social withdrawal,
19 hyperactivity, and physical complaints; "mild" verbal expressions of
20 anxiety or fear, expressions of anger, motor agitation, paranoid
21

22 ⁷ In this context, a "severe" rating indicates an
23 "[i]nability to perform one or more basic work-related
activities." A.R. 190.

24 ⁸ A "marked" rating indicates "[v]ery significant
25 interference with basic work-related activities." Id.

26 ⁹ A "moderate" rating indicates a "[s]ignificant
27 interference with basic work-related activities." Id.

28 ¹⁰ A "mild" rating indicates "[n]o significant interference
with basic work-related activities." Id.

1 behavior, and hyperactivity; and no suicidal trends, motor
 2 retardation, or hallucinations. A.R. 191. Further, Dr. Arnold opined
 3 plaintiff's overall illness is of "marked" severity and plaintiff is
 4 in the "seriously disturbed" category of the mental health priority
 5 populations.¹¹ A.R. 191, 193. Moreover, Dr. Arnold found plaintiff's
 6 limitations were not most likely the result of alcohol or drug abuse
 7 and would not likely dissipate within sixty days of sobriety, and
 8 plaintiff's "bipolar disorder is probably clinically significant
 9 without substance use[,] although his bipolar symptoms "are probably
 10 exacerbated to some degree" by drug abuse. A.R. 192. Finally, Dr.
 11 Arnold determined plaintiff has an IQ of between 70 and 84. A.R. 190.

12
 13 On December 18, 2002, Michael Brown, Ph.D., a nonexamining
 14 clinical psychologist, diagnosed plaintiff with a bipolar disorder and
 15 cannabis dependence, and opined plaintiff has "mild" restrictions in
 16 activities of daily living, "moderate" difficulties in maintaining

17
 18 ¹¹ Dr. Arnold's opinion utilizes terminology from
 19 Washington's Community Mental Health Services Act, see A.R. 193,
 20 which defined a "[s]eriously disturbed person" as someone who:

21 (a) Is gravely disabled or presents a likelihood of
 22 serious harm to himself or herself or others, or to the
 23 property of others, as a result of a mental disorder

24 . . . ;

25 (b) Has been on conditional release status, or under a
 26 less restrictive alternative order, at some time during
 27 the preceding two years from an evaluation and
 28 treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment
 in several areas of daily living; [or]

(d) Exhibits suicidal preoccupation or attempts;

. . . .

Revised Code of Wash. 71.24.025(17) (2002).

1 social functioning, "moderate" difficulties in maintaining
2 concentration, persistence or pace, and has had "no[]" episodes of
3 decompensation. A.R. 180-87. Dr. Brown also opined plaintiff is
4 "moderately" limited in his ability to: understand, remember and
5 carry out detailed instructions; maintain attention and concentration
6 for extended periods; complete a normal workday and workweek without
7 interruptions from psychologically-based symptoms and to perform at a
8 consistent pace without an unreasonable number and length of rest
9 periods; interact appropriately with the general public; accept
10 instructions and respond appropriately to criticism from supervisors;
11 get along with coworkers or peers without distracting them or
12 exhibiting behavioral extremes; respond appropriately to changes in
13 the work setting; and set realistic goals or make plans independently
14 of others; however, plaintiff is otherwise not significantly limited.
15 A.R. 212-14. Furthermore, Dr. Brown opined plaintiff has anger
16 issues, needs to work away from close contact with others, and needs a
17 firm but fair supervisor. A.R. 214. Finally, Dr. Brown determined
18 plaintiff's bipolar disorder to be credible and supported by clinical
19 findings, and found plaintiff's symptoms would episodically slow his
20 work pace; however, Dr. Brown opined that plaintiff has worked
21 successfully in the past despite his untreated bipolar disorder and
22 cannabis dependence. Id. On April 7, 2003, Edward T. Beaty, Ph.D.,
23 another nonexamining clinical psychologist, reaffirmed Dr. Brown's
24 opinions except for the finding that plaintiff had no episodes of
25 decompensation; rather, Dr. Beaty found plaintiff had one or two
26 episodes of decompensation. A.R. 212, 223-30. Finally, Dr. Beaty
27 opined that the severity of plaintiff's symptoms "waxes and wanes
28 according to his compliance with medications." A.R. 230.

DISCUSSION

III

The Court, pursuant to 42 U.S.C. § 405(g), has the authority to review the Commissioner's decision denying plaintiff disability benefits to determine if his findings are supported by substantial evidence and whether the Commissioner used the proper legal standards in reaching his decision. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

The claimant is "disabled" for the purpose of receiving benefits under the Act if he is unable to engage in any substantial gainful activity due to an impairment which has lasted, or is expected to last, for a continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a). "The claimant bears the burden of establishing a prima facie case of disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

The Commissioner has promulgated regulations establishing a five-step sequential evaluation process for the ALJ to follow in a disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**, the ALJ must determine whether the claimant is currently engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). If not, in the **Second Step**, the ALJ must determine whether the claimant has a severe impairment or combination of impairments significantly limiting him from performing basic work activities. 20

1 C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ
2 must determine whether the claimant has an impairment or combination
3 of impairments that meets or equals the requirements of the Listing of
4 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20
5 C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the
6 ALJ must determine whether the claimant has sufficient residual
7 functional capacity despite the impairment or various limitations to
8 perform his past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,
9 in **Step Five**, the burden shifts to the Commissioner to show the
10 claimant can perform other work that exists in significant numbers in
11 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).

12
13 Where there is evidence of a mental impairment that may prevent a
14 claimant from working, the Commissioner has supplemented the five-step
15 sequential evaluation process with additional regulations addressing
16 mental impairments. Maier v. Comm'r of the Soc. Sec. Admin., 154 F.3d
17 913, 914-15 (9th Cir. 1998) (per curiam). First, the ALJ must
18 determine the presence or absence of certain medical findings relevant
19 to the ability to work. 20 C.F.R. §§ 404.1520a(b)(1), 416.920a(b)(1).
20 Second, when the claimant establishes these medical findings, the ALJ
21 must rate the degree of functional loss resulting from the impairment
22 by considering four areas of function: (a) activities of daily living;
23 (b) social functioning; (c) concentration, persistence, or pace; and
24 (d) episodes of decompensation. 20 C.F.R. §§ 404.1520a(c)(2-4),
25 416.920a(c)(2-4). Third, after rating the degree of loss, the ALJ
26 must determine whether the claimant has a severe mental impairment.
27 20 C.F.R. §§ 404.1520a(d), 416.920a(d). Fourth, when a mental
28 impairment is found to be severe, the ALJ must determine if it meets

1 or equals a Listing. 20 C.F.R. §§ 404.1520a(d)(2), 416.920a(d)(2).
 2 Finally, if a Listing is not met, the ALJ must then perform a residual
 3 functional capacity assessment, and the ALJ's decision "must
 4 incorporate the pertinent findings and conclusions" regarding
 5 plaintiff's mental impairment, including "a specific finding as to the
 6 degree of limitation in each of the functional areas described in [§§
 7 404.1520a(c)(3), 416.920a(c)(3)]." 20 C.F.R. §§ 404.1520a(d)(3),
 8 (e)(2), 416.920a(d)(3), (e)(2).

9
 10 Applying the five-step sequential evaluation process, the ALJ
 11 found plaintiff has not engaged in substantial gainful activity since
 12 July 27, 2002. (Step One). The ALJ then found plaintiff has a
 13 substance addiction disorder, affective disorder and personality
 14 disorder, which are severe impairments (Step Two); however, he does
 15 not have an impairment or combination of impairments that meets or
 16 equals a Listing. (Step Three). The ALJ next determined plaintiff is
 17 unable to perform his past relevant work. (Step Four). Finally, the
 18 ALJ concluded plaintiff can perform a significant number of jobs in
 19 the national economy; therefore, he is not disabled. (Step Five).

20 21 IV

22 At Step Five, the burden shifts to the Commissioner to show the
 23 claimant can perform other jobs that exist in the national economy.
 24 Widmark v. Barnhart, 454 F.3d 1063, 1069 (9th Cir. 2006); Pinto v.
 25 Massanari, 249 F.3d 840, 844 (9th Cir. 2001). To meet this burden,
 26 the Commissioner "must 'identify specific jobs existing in substantial
 27 numbers in the national economy that claimant can perform despite
 28 [his] identified limitations.'" Meanel v. Apfel, 172 F.3d 1111, 1114

(9th Cir. 1999) (quoting Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995)). There are two ways for the ALJ to meet this burden: "(1) by the testimony of a vocational expert, or (2) by reference to the Medical Vocational Guidelines ["Grids"] at 20 C.F.R. pt. 404, subpt. P, app. 2."¹² Tackett v. Apfel, 180 F.3d 1094, 1099 (9th Cir. 1999); Widmark, 454 F.3d at 1069. However, the ALJ cannot rely on the Grids when, as here, the claimant suffers from mental limitations; rather, he must obtain the testimony of a vocational expert. Widmark, 454 F.3d at 1069-70; Thomas v. Barnhart, 278 F.3d 947, 960 (9th Cir. 2002). Moreover, hypothetical questions posed to a vocational expert must consider all of the claimant's limitations, Thomas, 278 F.3d at 956; Lewis v. Apfel, 236 F.3d 503, 517 (9th Cir. 2001), and "[t]he ALJ's depiction of the claimant's disability must be accurate, detailed, and supported by the medical record." Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999). "If a vocational expert's hypothetical does not reflect all the claimant's limitations, then the 'expert's testimony has no evidentiary value to support a finding that the claimant can perform jobs in the national economy.'" Matthews v. Shalala, 10 F.3d 678, 681 (9th Cir. 1993) (quoting Delorme v. Sullivan, 924 F.2d 841, 850 (9th Cir. 1991)); Lewis, 236 F.3d at 517.

¹² The Grids are guidelines setting forth "the types and number of jobs that exist in the national economy for different kinds of claimants. Each rule defines a vocational profile and determines whether sufficient work exists in the national economy. These rules represent the [Commissioner's] determination, arrived at by taking administrative notice of relevant information, that a given number of unskilled jobs exist in the national economy that can be performed by persons with each level of residual functional capacity." Chavez v. Dep't of Health and Human Servs., 103 F.3d 849, 851 (9th Cir. 1996) (citations omitted).

1 A claimant's residual functional capacity ("RFC") is what he can
 2 still do despite his physical, mental, nonexertional, and other
 3 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
 4 Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). Here,
 5 the ALJ found plaintiff has the RFC to perform "work activities at all
 6 levels of exertion . . . limited to simple, routine, repetitive, non-
 7 public tasks." A.R. 14. Incorporating this finding, the ALJ asked
 8 vocational expert Alan L. Ey the following hypothetical question:

9
 10 Please consider a younger person, high school equivalency,
 11 the work noted in 4E, a physically unlimited RFC, and mental
 12 limits limiting the work to that involv[ing] simple,
 13 routine, repetitive, non-public tasks. With this assessment
 14 can the claimant return to any past relevant work [or any
 15 other work in the regional or national economies]?

16
 17 A.R. 233-34. Mr. Ey answered that an individual with this vocational
 18 profile could not perform any of plaintiff's past relevant work;
 19 however, he could work as a commercial cleaner, Dictionary of
 20 Occupational Titles ("DOT")¹³ no. 381.687-014; a horticultural worker,
 21 DOT no. 405.687-014; and a hand packager, DOT no. 920.587-018. A.R.
 22 234. Based on the vocational expert's testimony, the ALJ found
 23 plaintiff retains the RFC to perform a significant number of jobs in
 24

25 ¹³ The DOT is the Commissioner's primary source of reliable
 26 vocational information. Johnson v. Shalala, 60 F.3d 1428, 1434
 27 n.6 (9th Cir. 1995); Terry v. Sullivan, 903 F.2d 1273, 1276 (9th
 28 Cir. 1990); see also Pinto, 249 F.3d at 845-46 ("[T]he best
 source for how a job is generally performed is usually the
 Dictionary of Occupational Titles.").

1 the national economy and, thus, is not disabled. A.R. 19-20.
2 However, plaintiff contends the ALJ's findings are not supported by
3 substantial evidence because: (a) the ALJ failed to properly consider
4 the opinions of plaintiff's treating psychologist, Dr. Arnold, and (b)
5 the ALJ did not pose a complete hypothetical question to the
6 vocational expert. The plaintiff is correct on both grounds.

7
8 The medical opinions of treating physicians or psychologists are
9 entitled to special weight because the treating doctor "is employed to
10 cure and has a greater opportunity to know and observe the patient as
11 an individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir.
12 1987); Edlund v. Massanari, 253 F.3d 1152, 1157 (9th Cir. 2001); see
13 also 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2) (generally providing
14 more weight is given to treating sources "since these sources are
15 likely to be the medical professionals most able to provide a
16 detailed, longitudinal picture of your medical impairment(s)").
17 Therefore, the ALJ must provide clear and convincing reasons for
18 rejecting the uncontroverted opinions of a treating psychologist,
19 Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Connett v.
20 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003), and "[e]ven if [a]
21 treating doctor's opinion is contradicted by another doctor, the ALJ
22 may not reject this opinion without providing 'specific and legitimate
23 reasons' supported by substantial evidence in the record." Reddick v.
24 Chater, 157 F.3d 715, 725 (9th Cir. 1998); Bayliss, 427 F.3d at 1216.

25
26 In determining that plaintiff has the RFC to perform simple,
27 routine, repetitive, non-public tasks, the ALJ did not include all of
28 the limitations found by Dr. Arnold, although he stated he did. See

1 A.R. 18. Most significantly, Dr. Arnold found plaintiff is unable to
2 relate appropriately to co-workers and supervisors, A.R. 190, 192, and
3 the ALJ did not include this limitation in determining plaintiff's
4 RFC. A.R. 14. Merely limiting plaintiff to "non-public tasks," as
5 the ALJ did, is insufficient since a task that has little or no
6 contact with the public may still require interaction with co-workers
7 and supervisors. Thus, the ALJ implicitly rejected one of Dr.
8 Arnold's opinions without providing any reason at all for rejecting
9 it, and this failure is legal error. Smolen, 80 F.3d at 1286; Baxter
10 v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). Moreover, the ALJ
11 also failed to incorporate the limitation that plaintiff is unable to
12 relate appropriately to co-workers and supervisors into his
13 hypothetical question to the vocational expert; thus, the vocational
14 expert's response to the incomplete hypothetical posed to him has no
15 evidentiary value and the ALJ's Step Five determination is not
16 supported by substantial evidence. Edlund, 253 F.3d at 1160; Lewis,
17 236 F.3d at 517-18.

18 19 V

20 When the Commissioner's decision is not supported by substantial
21 evidence, the Court has authority to affirm, modify, or reverse the
22 Commissioner's decision "with or without remanding the cause for
23 rehearing." 42 U.S.C. § 405(g); McCartey v. Massanari, 298 F.3d 1072,
24 1076 (9th Cir. 2002). "Remand for further administrative proceedings
25 is appropriate if enhancement of the record would be useful[,]"
26 Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004), as it would be
27 here. See Bunnell v. Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003)
28 (affirming district court's remand based, in part, on ALJ's failure to

1 provide adequate reasons for rejecting treating physician's opinions,
2 where additional issues need to be resolved); Harman v. Apfel, 211
3 F.3d 1172, 1180 (9th Cir. 2000) ("In cases where the testimony of the
4 vocational expert has failed to address a claimant's limitations as
5 established . . . , " the matter should be remanded for further
6 proceedings), cert. denied, 531 U.S. 1038 (2000).

7
8 **ORDER**

9 IT IS ORDERED that the Commissioner's decision is reversed, and
10 the action is remanded to the Social Security Administration for
11 further proceedings consistent with this Opinion and Order, pursuant
12 to sentence four of 42 U.S.C. § 405(g), and Judgment shall be entered
13 accordingly.

14
15 DATE: June 15, 2007 /s/ Rosalyn M. Chapman
16 ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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